Lim Goh Huat v Saw Keng See

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R1-12-84 OF 1996
ABDUL KADIR SULAIMAN J
21 SEPTEMBER 1998

Civil Procedure *— Affidavits — Defective affidavit without jurat — Failure to include a jurat — Failure to certify that deponent had understood contents of affidavit as explained to her — Whether affidavits admissible for purpose of evidence in support of application for summary judgment — Subordinate Courts Rules 1980 O 25 r 24*

Civil Procedure *— Limitation of action — Failure to state date limitation commences — Date of alleged acknowledgment of debt also omitted — Whether statement of claim defective*

Civil Procedure *— Summary judgment — Triable issues — Whether proper case for O 26A judgment — Subordinate Courts Rules 1980 O 26A*

The respondent claimed against the appellant for the recovery of several friendly loans purpotedly given by her to the appellant. The sessions judge granted summary judgment under O 26A of the Subordinate Courts Rules 1980 ('the SCR'). The appellant appealed. The appellant denied the claim but averred that being close friends, he had acted as the agent of the respondent in pursuance of which he was paid a sum of money. Counsel for the appellant contended that: (i) the amended statement of claim of the respondent was defective for failure to state the commencement date for accrual of the cause of action thereby precluding the appellant from setting up the defence of limitation; (ii) the affidavits in support of the summary application were defective for failure to carry a jurat as stipulated in O 25 r 24 of the SCR; (iii) there was an eight-month delay in the respondent's application for the summary judgment; and (iv) there were triable issues before the court.

Held, allowing the appeal with costs:

(1) Various periods wherein the loans were said to have been granted to the appellant were not disclosed in the pleadings. As such, the date of the accrual of the cause of action could not be determined. Furthermore, the omission to include in the pleadings the exact period when the alleged acknowledgment was said to have been made by the appellant had caused prejudice to the appellant. The amended statement of claim was therefore defective (see p 607G–I).

(2) The allegation of the respondent that he was an agent for the appellant in respect of a certain sum was a serious issue to be tried to determine whether the appellant was indeed indebted to the respondent for the purpose alleged in the amended statement of claim (see p 608B–C).

(3) There were serious defects in the two affidavits in support of the respondent's application. The failure to include a jurat in the first affidavit and the failure to certify that the deponent had understood the contents of the affidavit as explained to her in the second affidavit had rendered both affidavits inadmissible for the purpose of evidence in support of the application for summary judgment (see p 609D–H).

(4) On the facts, having considered the explanation for the delay put forward by the respondent, the delay of eight months in the circumstances was inordinate (see p 609H–I).

[Bahasa Malaysia summary

Penentang menuntut terhadap perayu untuk mendapatkan semula beberapa pinjaman berbaik-baik yang dikatakan telah diberikan oleh beliau kepada perayu. Hakim mahkamah sesyen telah memberikan penghakiman terus di bawah A 26A Kaedah-Kaedah Mahkamah Rendah 1980 ('KMR'). Perayu telah merayu. Perayu telah menafikan tuntutan tersebut tetapi telah menegaskan bahawa sebagai kawan karib, beliau telah bertindak sebagai ejen penentang, selaras dengan yang mana beliau telah dibayar sejumlah wang. Peguam bagi pihak perayu menghujahkan bahawa: (i) pernyataan tuntutan terpinda penentang adalah tidak sempurna kerana gagal untuk menyatakan tarikh permulaan kausa tindakan terakru yang dengan itu menghalang perayu daripada menetapkan pembelaan had masa; (ii) afidavit-afidavit yang menyokong permohonan ringkas adalah tidak sempurna kerana gagal membawa bersama satu jurat sepertimana yang ditetapkan dalam A 25 k 24 KMR; (iii) terdapat kelewatan selama lapan bulan dalam permohonan penentang untuk penghakiman terus; dan (iv) terdapatnya isu-isu yang boleh dibicarakan di hadapan mahkamah.

Diputuskan, membenarkan rayuan dengan kos:

(1) Pelbagai tempoh di mana pinjaman-pinjaman tersebut dikatakan telah diberikan kepada perayu telah tidak didedahkan dalam pliding-pliding. Oleh yang demikian, tarikh kausa tindakan terakru tidak dapat ditentukan. Lagipun, peninggalan untuk memasukkan dalam pliding-pliding tempoh yang tepat bila mana pengakuan yang dikatakan telah dibuat oleh perayu telah menyebabkan kemudaratan kepada perayu. Pernyataan tuntutan terpinda dengan itu adalah tidak sempurna (lihat ms 607G–I).

(2) Pengataan penentang bahawa beliau merupakan seorang ejen bagi pihak perayu berhubung dengan sejumlah wang yang tertentu merupakan satu isu yang serius untuk dibicarakan bagi menentukan sama ada sesungguhnya perayu adalah terhutang kepada penentang untuk tujuan yang dikatakan dalam pernyataan tuntutan terpinda (lihat ms 608B–C).

(3) Terdapatnya ketidaksempurnaan yang serius dalam kedua-dua afidavit yang menyokong permohonan penentang. Kegagalan untuk menyertakan bersama satu jurat dalam afidavit pertama dan kegagalan untuk mengesahkan bahawa saksi sumpah telah memahami kandungan afidavit tersebut sepertimana yang diterangkan kepada beliau dalam afidavit kedua, telah menjadikan kedua-dua afidavit tidak boleh diterima untuk tujuan keterangan bagi menyokong permohonan untuk penghakiman terus (lihat ms 609D–H).

(4) Berdasarkan fakta-fakta, setelah mempertimbangkan penjelasan untuk kelewatan yang dikemukakan oleh penentang, kelewatan selama lapan bulan dalam keadaan tersebut adalah melampau (lihat ms 609H–I).]

Notes

For a case on defective affidavit without jurat, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) para 254.

For cases on limitation of action, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 3066–3079.

For cases on triable issues, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 4684–4730.

Cases referred to

Bruce v Oldhams Press Ltd [1936] 1 KB 697 (refd)
Gold Ores Reduction Co v Parr [1892] 2 QB 45 (refd)
Jacobs v Booth's Distillery Co (1901) 85 LT 262 (refd)
Lagos v Grunswaldt [1910] 1 KB 41 (refd)
S Ravi a/l G Suppiah v Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor [1995] 2 CLJ 152 (refd)

Legislation referred to

Rules of the High Court 1980 O 14
Subordinate Courts Rules 1980 O 25 r 24, O 26A

Mabel Sebastian (*Sebastian & Nayar*) for the appellant.
Jeffrey CH Foong (*LC Chong & Co*) for the respondent.

Cur Adv Vult

Abdul Kadir Sulaiman J: This is an appeal by the appellant/defendant against the decision of the learned sessions judge made on 19 March 1996, giving summary judgment under O 26A of the Subordinate Courts Rules 1980 ('the SCR 1980'), to the respondent/plaintiff upon the application of the respondent, in respect of the claim by the respondent for the recovery of the balance of a friendly loan purportedly given by her to the appellant.

The application for summary judgment was made some eight months after the appellant had filed his defence. The amended statement of claim of the respondent avers that she gave friendly loans to the appellant on various occasions amounting in all to RM150,300. However, no dates were supplied as to these various occasions when the loans were granted. The respondent would rely on an acknowledgment of the debt by the appellant. Again, no particulars as to the date of the alleged acknowledgment was given in the pleading of the respondent. Of the total of RM150,300 granted, the appellant made four part-payments totalling in all to RM10,000, leaving a balance of RM140,300, which forms the amount of the claim in the action. It is also averred that apart from the four part-payments, the appellant also issued to the respondent two Oriental Bank Bhd cheques Nos 013073 and 013074 each for RM50,000, but the two cheques were not cleared as the account had been closed.

By his amended statement of defence, the appellant denied the claim but avers that being close friends, he acted as the agent of the respondent and in such capacity the respondent gave to him a total sum of RM60,000 which had nothing to do with the claim as pleaded, and out of this amount there was still some balance left with him. He particularised the detail of the expenditure committed on behalf of the respondent as her agent.

The respondent made the application for summary judgment on the claim on 13 November 1995. The following affidavits were exchanged between the parties in relation to this application for summary judgment:

(a) affidavit in support in Bahasa Malaysia affirmed by the respondent at Penang on 6 November 1995, with a jurat that the content was explained to her in Cantonese;

(b) affidavit in reply of the appellant affirmed on 6 December 1995;

(c) further affidavit of the appellant affirmed on 14 December 1995; and

(d) additional affidavit of the respondent in Bahasa Malaysia affirmed on 27 December 1995 at Kuala Lumpur without such jurat as found in her affidavit in support.

The various affidavits mentioned above contained various exhibits in support. In the affidavit in support of the respondent, exh 'SKS-1' is the purported acknowledgment of debt by the appellant made on 10 May 1994. Receipt No 004 in exh 'SKS-2' purports to be an official receipt dated 15 October 1994, issued by the respondent to the appellant for a sum of RM2,500 in respect of part-payment of the friendly loan of RM150,300. This receipt was without the signature of the respondent as the recipient of the amount stated therein but was affixed with a revenue stamp. In exh 'SKS-3', there is a purported acknowledgment of the debt by the appellant of 15 October 1994, but without his signature on it even though there is a signature of a witness to that purported acknowledgment by him. Exhibit 'SKS-4' contains copies of the two Oriental Bank Bhd cheques mentioned earlier in the amended statement of claim of the respondent. They bore the serial No 013073 and 013074. However, the dates of issue of the cheques appear not to follow the sequence of the serial

numbers. The former was dated 10 October 1994 and the latter was dated 26 September 1994. A

According to the affidavit in support in (a) above, the respondent based his claim from the appellant of the debt of RM150,300 on exhs 'SKS-1' to 'SKS-4' mentioned above. This affidavit also attempts to explain the delay in the making of this application for summary judgment of about eight months after the defence of the appellant was filed. The said delay was due to the fact that she resides in Penang whilst her solicitors and the suit are in Kuala Lumpur. Time was necessary for purpose of communication between them and for her to gather all documents necessary for the purpose. B

The affidavit in reply of the appellant as in (b) above, discloses that he was her close friend and her agent relating to her official and private affairs. In connection with a Civil Suit No GS 24–92 in the Kuching High Court, in respect of a dispute between the respondent as the second wife of the deceased with the deceased's first wife and his children over the estate of the deceased, he was asked to look for solicitors which he did. As such agent, he was given by the respondent a sum of RM60,000 of which RM12,500 was returned to the respondent upon her request on five occasions. He operated Account No 032–1924008–01 with Oriental Bank Berhad Kuala Lumpur, from 6 May 1992 and this account was closed on 20 February 1993. He exhibited 'GSL-A' being receipt issued by Tan & Yap Advocates dated 6 February 1993 for RM5,000. Exhibit 'GSL-B' is the counterfoil of cheque No MBB 655793 dated 27 November 1992 for RM5,000 payable to the same advocates. There were other payments by cash made to the solicitors amounting to RM6,000. A total sum of RM19,200 was expended towards maintenance expenses for the children of the respondent who were then studying in Kuala Lumpur and were staying in a house at Taman Connaught, Cheras, Kuala Lumpur which was in the same locality where he stayed, at the rate of RM800 per month for a period of two years. He also deposed that he paid RM2,300 to South East Asia Insurance Bhd as insurance premium in respect of the respondent's vehicle. He admitted still holding the balance over the RM60,000 given to him by the respondent as solicitor's fee in respect of the case which had not been fully met. He was prepared to return to the respondent out of this balance to the extent of RM5,000. He denied signing before any witness all the documents listed in exh 'SKS-3' of the respondent. He also denied receiving the official receipts listed in exh 'SKS-2' of the respondent. In any event, he pointed out that as regards receipt No 004 purportedly to have been issued on 15 October 1994 by the respondent, it was unsigned. He also pointed out that the document dated also on 15 October 1994, exhibited in 'SKS-3', does not bear his signature though the witness to his signature signed as such. This is one of the documents which the respondent relies to base her claim against the appellant. Relating to exh 'SKS-4' of the respondent, the appellant deposed that on one of his visits to Penang, he stayed in the respondent's house. He believes that the respondent had taken the blank cheque sheets which he had signed, from his travelling bag without his knowledge. The cheques C D E F G H I

relate to the account which he had closed in 1993. He also deposed that the handwriting on the said two cheques was not his as he never issued them. Further, it was pointed out that the dates sequence in the two cheques would suggest that it was extraordinary in the sense that ordinarily, the earlier serial number of the cheque would be used on an earlier date than the later serial number. As to the explanation for the delay given by the respondent, he contends that it is unacceptable because the address given by her in the affidavit in support of 6 November 1995 and the address given in the purported acknowledgment of debt in exh 'SKS-1' is of No 55, Jalan Saujana Satu, Taman Connaught, Cheras which is in Kuala Lumpur.

By his further affidavit listed in (c) above, the appellant exhibited 'GLS-1', which is a copy of the letter dated 6 December 1995 from Oriental Bank Bhd to his solicitors confirming that the current account No 032–1924008–01 was opened on 6 May 1992 and subsequently it was closed on 20 February 1993. As to the bank statements relating to the account, they had been sent to the bank's archive for proper storage and would be available at a later date upon their receipt from the archive.

Lastly, is the further affidavit of the respondent mentioned in (d) above. In this affidavit, she confirms that she has directed the appellant to look for solicitors on her behalf but was not aware of the undertaking the appellant had given to the solicitors. She contends that exh 'SKS-1' which is the acknowledgment of debt dated 10 May 1994 was prepared by her and was given to the appellant who signed it in his office and returned it back to her soon after the signing. She further contends that the sum of RM60,000 given by her to the appellant had nothing to do with the friendly loan which she had given to him. Hence, she contended that it is not at all a triable issue. She also exhibited 'SKS-6' which contains a receipt and correspondence from the solicitors relating to her case in Kuching High Court. Of significant is her explanation concerning the absence of the signatures in the relevant documents in exhs 'SKS-2' and 'SKS-3'. She deposed that the documents were duplicate copies. She then exhibited 'SKS-7' containing the two related documents which purports to be signed by the appellant. She contends further that the two documents were signed by the appellant in front of her, and witnessed by one George Pereira, a senior officer working for the appellant. However, there is no affidavit affirmed by the said George Pereira to support her evidence on this point. She denied ever taking the appellant's cheque sheets as alleged but on the other hand, they were given to her by the appellant. The appellant did not lodge any police report relating to his said allegation. She was not aware of the irregularity in the sequence of the issue of the two cheques when she received them from the appellant. She contends further that the alleged insurance premium was paid by her to the insurance company. She also denied the evidence of the appellant that he maintained the children of the respondent. As to the contention by the appellant, she deposed that she used her Kuala Lumpur address in her affidavit in support because it was the only address available to her solicitors then. Only after that did her solicitors obtained her address in Penang. She moved over there since December 1994.

An application for summary judgement under O 26A of the SCR 1980 in the subordinate courts is equivalent to an application under O 14 of the RHC 1980 in the High Courts. In the circumstances, the same principle of laws applies. This provision for obtaining judgment without trial and without waiting for delivery of defence is intended to apply to cases which are virtually uncontested or uncontestable (*Mallal's Supreme Court Practice* (2nd Ed)). Where there is even a triable issue, such application for summary judgment cannot be entertained. It is not a short-cut for a plaintiff to force the defendant to settle his claim without having to go through the process of an ordinary trial by the evidence of witnesses in open court before a judge. In this matter before me now, I take a point to incorporate in this judgment the detailed evidence as contained in the various affidavits of the parties simply to show that the matter of the claim of the respondent is not one which to allow the suit to go to trial, would defeat the rights of the respondent by delay, and at the same time causing great loss to the respondent who is endeavouring to enforce her rights (see *Jacobs v Booth's Distillery Co* (1901) 85 LT 262HL). Such an application of this nature is allowed by the rules to be made by a plaintiff even before a defence is filed provided that the statement of claim has been served on the defendant. The ground allowing such a plaintiff to do so is that the case being plain and obvious, the plaintiff can even satisfy the court that without the defence being filed, on the statement of claim itself the defence if there is to be any, is a sham. In other words, by looking at the statement of claim itself, one can safely say that judgment on the claim can validly be entered against the defendant, for if any defence is to be filed by the defendant, it would not raise any triable issue at all. Upon such an application being made, it is upon the defendant to show cause against the application by evidence to satisfy the court that there is an issue or question in dispute which ought to be tried, in order to defeat the application for summary judgment. The show cause may be grounded on technicality or on the merit. Technicality may include the assertion that the statement of claim or the affidavit in support of the plaintiff is defective. Even though the rules allow an application for summary judgment be made by the plaintiff even before the filing of the defence by the defendant, it does not preclude the plaintiff from doing so even after the delivery of the defence, provided that the delay is not inordinate. All application for summary judgment must be supported by affidavit. In the absence of the affidavit, the application may be dismissed (see *Lagos v Grunwaldt* [1910] 1 KB 41 (CA)). On the other hand, any defect or omission in the statement of claim cannot be made good by affidavit evidence (see *Gold Ores Reduction Co v Parr* [1892] 2 QB 45).

On the matter before the court in this present appeal, learned counsel for the appellant submits that the amended statement of claim of the respondent is defective as it does not state in clear terms the commencement date for the accrual of the cause of action thereby precluding the appellant from pleading the defence of limitation, should it arise. The amended statement of claim merely avers that the respondent had given several friendly loans to her totalling in all to RM150,000 as supported by an

A acknowledgment by the appellant. As to those facts, she did not condescend to particulars to enable the appellant to know the moment of the accrual of the cause of action. The basic principle is that the pleading must contain a 'statement in a summary form of the material facts'. The word 'material' means necessary for the purpose of formulating a complete cause of action, and if any one 'material' statement is omitted, the statement of B claim is bad (per Scott J in *Bruce v Odhams Press Ltd* [1936] 1 KB 697 at p 712). In reply, learned counsel for the respondent submits that the amended statement of claim of the respondent is not defective though he concedes that the various dates the loan was said to have been given were not stated in the pleading. According to counsel, such particulars need not C be pleaded as the claim is based on the acknowledgment of debt by the appellant as so stated in exh 'SKS-1' and the date of such acknowledgment would be the date of the accrual of the cause of action and further that there were other evidence in exhs 'SKS-3' and 'SKS-4' which show the admission by the appellant of the part-payment of the debt being made. In the circumstances, the question of not being able to plead limitation, if D any, would not arise and that a proper defence could have been put up. He admitted however, that the pleading on the whole may not be perfect, but with what had been pleaded, there is no basis to say that the pleading is bad and defective. Learned counsel also contends that the proceeding before the court is not one on an application for the striking out of the E pleading under O 14 of the SCR 1980, and as such, this provision of the rules cannot be invoked to strike out this pleading of the respondent.

With respect to the learned counsel for the respondent, we are at this point dealing with the question of the defectiveness of the pleading which is a ground for refusing an application for summary judgment under F O 26A of the SCR 1980. In the circumstances, the issue of the supporting evidence in the nature of exhs 'SK-1', 'SKS-2' and 'SKS-3' in the affidavit in support would not as yet arise. We are merely looking at the pleading, in this case, the amended statement of claim of the respondent, in order to decide whether such a pleading is defective. Looking at the amended statement of claim of the respondent in this case, I agree with the submission G of learned counsel for the appellant in that it is defective. As so conceded, the various periods wherein the loans are said to have been granted to the appellant were not disclosed in the pleading. As such, the date of the accrual of the cause of action could not be determined. It is averred in the pleading however, that these various loans were being acknowledged by the appellant. The question is when was the alleged acknowledgment H made? The absence of the particular period when such an acknowledgment, said to have been made by the appellant in the pleading, has prejudiced the appellant, as he is unable to determine the date of the accrual of the cause of action to enable him to properly prepare his defence. Again, it was averred in the pleading that the appellant made four part-payments of the I alleged loan, leaving a certain balance to be settled. Even here, no particulars as to the periods of the alleged payment was particularised. Lastly, it was averred that a certain amount was tendered by the appellant by means of two cheques. However, here again, the dates on the two cheques were not

particularized when the numbers were particularised. In the circumstances, I cannot help but would very much agree with the submission of the learned counsel for the appellant that on this ground alone, the summary judgment entered by the learned sessions judge cannot stand.

If I am wrong in saying so in that the amended statement of claim is not defective, I will now turn to deal with the various issues in the application of the respondent for summary judgment. In doing so, we have to have regard to the amended defence of the appellant which was on record before the filing of the application. The appellant denies the claim for the alleged debt but instead averred that he was the agent for the respondent in respect of a sum of RM60,000. So clearly there is a serious issue to be tried here to determine whether indeed the appellant was indebted to the respondent for the purpose as alleged in the amended statement of claim or the indebtedness relates to other purpose in the capacity of the appellant as an agent for which it is not the subject matter of the claim. On this ground too, the case of the respondent is not one so straightforward that summary judgment ought to be given as applied for by the respondent on her pleading.

The respondent's application is supported by two affidavits listed in (a) and (d) above. An affidavit in support is a prerequisite in any application of this nature as it forms the evidence in support. Without the affidavit, there would not be any evidence to justify the application. Relating to these two affidavits in support of the application, learned counsel for the appellant submits that they are also defective and should be ignored. First, the affidavit in (a) gives the address of the respondent as No 55, Jalan Saujana Satu, Taman Connaught, 56000 Cheras, Kuala Lumpur. But in the said affidavit, in explaining away the delay in the making of the application, the respondent deposed that the reason for the delay was because she was residing in Penang. In the circumstances, the address given in the affidavit is not true. In reply, learned counsel for the respondent submitted that by her affidavit in (c) above, she had explained the matter in that her solicitors, in the preparation of the said affidavit had only her address in Kuala Lumpur though she was resident in Penang. On my part, I would not consider it as a serious matter because it is not in dispute that she was resident in Penang and her address in Kuala Lumpur is also not false. However, the more serious matter brought out by counsel for the appellant is on the question of the requirement of the jurat in an affidavit in respect of a deponent who is illiterate or blind as stipulated by O 25 r 24 of the SCR 1980. It is to be noted that two affidavits of the respondent in (a) and (d) above are in Bahasa Malaysia. Whilst the affidavit in (a) carries a jurat that it was read and explained to her in Cantonese (Kongfu), the one in (d) carries no such jurat at all. The respondent being a Chinese, the language used in the affidavit may be something which she is illiterate of. Order 25 r 24 states:

> Where it appears to the person administering the oath that the deponent is illiterate or blind, he must certify in the jurat that:
>
> (a) the affidavit was read in his presence to the deponent;

A (b) the deponent seemed perfectly to understand it; and

(c) the deponent made his signature or a mark in his presence;

the affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

B In the case of the affidavit in (a), as there was in the jurat that the affidavit was read and explained to the respondent in Cantonese (Kongfu), it goes to show that the respondent is illiterate in Bahasa Malaysia. That being the case, there must similarly be a certificate in the jurat in the affidavit in (d). But there was none at all. In the circumstances, there was a serious defect C in the affidavit in (d). But learned counsel for the respondent submitted that it is not so on the authority of *S Ravi a/l G Suppiah v Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1995] 2 CLJ 152. In that case, the affidavit of the deponent was affirmed in Bahasa Malaysia and the deponent signed in Tamil. There was no indication in the said affidavit that the deponent was literate in Bahasa Malaysia. The court held that the D affidavit is defective and shall not be used in evidence. Under the circumstances of the present case, the authority cited cannot be of any help to the respondent. It is clear from the jurat in affidavit in (a) that the respondent is illiterate in Bahasa Malaysia. This is further supported by the evidence in the signature of the respondent which was in Chinese character. In the circumstances, owing to the absence of the required E certificate in the jurat, the affidavit in (d) becomes inadmissible as evidence in the case. The fact that the affidavit was admitted by the learned sessions judge does not make it admissible during this appeal proceedings because an appeal before me is in the nature of a rehearing. That is not all. What then is the status of the affidavit in (a)? The provision of O 25 r 24 is very F clear. In a situation where the deponent is illiterate or blind, the person administering the oath must certify the three matters stipulated therein. There is a certificate to the effect that the said affidavit was read to the respondent. There was also in the certificate that the affidavit was explained to her in Cantonese (Kongfu). But by certifying such, it does not in any way mean that the deponent seemed perfectly to understand it, the second G requirement needed under the rule. No doubt it was explained to her, but the question is whether she really understood what was being explained to her. In the circumstances, I rule that this affidavit in (a) is as well defective. As the defect in the two said affidavits are serious, they are inadmissible for the purpose of the evidence in support of her application for summary H judgment against the appellant.

Again, if I am still wrong in so holding in that there were no defects in the two said affidavits in support of the respondent, on the facts having considered the explanation for the delay put forward by the respondent, the delay of eight months in the circumstances of it is inordinate. The I excuse given by the respondent for the delay was the problem of communicating with her solicitors and the need to gather the necessary documents. Taking into consideration the sophisticated technology of today in the field of communication, the excuse given appears to be very

lame and unacceptable. As to the time required to gather documents, in the first place, before instituting any action against the appellant, the respondent ought to have been ready with the necessary evidence in support of her case. She ought to have been advised on the question of a full trial and the chances of getting a summary judgment without trial. All those evidence in support ought to have been ready at the inception and the excuse given of the need to gather evidence subsequently means nothing but an attempt to embark on an expedition in the hope that the appellant would admit the claim upon the service of the summons relating to the claim.

But if that too receives no support in my favour, what is the evidence before the learned sessions judge or before this court to go in favour of the respondent? The case is clearly not one with no triable issues. In his defence, the appellant raises the issue of whether there was a debt due to the respondent as per claim or was it in relation to the RM60,000 given to him as the agent for the respondent. The affidavits in reply of the appellant in (b) and (c) have indeed raised several serious issues to be tried. Why the two cheques which are serially numbered should have the reversed dates of issue in the light of the contention that as at the dates of issue, the account had been closed. The appellant questions the genuineness of the purported acknowledgment of debt of 10 May 1994 which is for the respondent to establish that it is genuine, it being the basis of her cause of action. Why was the official receipt of 15 October 1994 bearing a revenue stamp but without the signature of the appellant as were found in the other official receipts for the purpose of the purported debts? The explanation by the respondent that it was a copy is far from conclusive because being a duplicate, the signature appearing on the original should also appear on the duplicate and further why should the revenue stamp be on the duplicate and not on the original? As to the unsigned acknowledgment of the part-payment of the debt on a document dated 15 October 1994 as evidence in 'SKS-3', why must the unsigned duplicate copy be in the possession of the respondent, the document emanating from the appellant to suggest that by mistake the respondent tendered the duplicate and not the original in the first instant? To my mind, these are all serious issues to be tried to get down to the truth, which is possible only through the process of a full trial of the action.

In the circumstances, this appeal of the appellant is allowed with costs here and below. The decision of the learned sessions judge is hereby set aside. The sessions court should immediately fix a date for the hearing of this suit by the respondent.

Appeal allowed with costs.

Reported by Mohd Rizal Abidin